IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 910 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMT. SHEELABEN GOVINDBHAI JETHI
Versus
STATE OF GUJARAT

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Appearance :
MR JIVANLAL G SHAH for the Appellant
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 08/11/2006

ORAL JUDGMENT

1. Present Appeal arises from judgment and order dated 27.11.1987 in Special Case No.7 of 1985 passed by the learned Special Judge, Bhuj-Kutch, whereby the learned Special Judge was

pleased to hold the appellant guilty for the offence under Section Sub-section (2) of Section 5 of The Prevention of Corruption Act, 1947 (for short, “the Act”) and Section 161 of the Indian Penal Code (as it stood prior to its repeal by The Prevention of Corruption Act, 1988 [49 of 1988] Section 31).

The appellant has expired during the pendency of the Appeal. His heirs are brought on record by an order passed in Criminal Misc. Application No.4127 of 1996, because the matter is under The Prevention of Corruption Act, 1947. The appellant being an employee of Gujarat Electricity Board, if the charge levelled against him are not believed, his heirs will be entitled to receive post retiral dues.

The learned Special Judge was pleased to award one year's R.I. for offence under Section 161 of the Indian Penal Code (for short, “IPC”), but no fine was imposed. For the offence under Section 5(2) of the Act, he was awarded one year's R.I., fine of Rs.500/- and in default, six months S.I.

The learned Special Judge was pleased to order that both the sentences shall run concurrently.

2. The facts of the case are that the incident took place in the month of August, 1984. At the relevant time, the appellant – accused – Govindram Parshuram Jethi was serving as Senior Assistant in the rural sub-division office of the Gujarat Electricity

Board (“GEB”, for short) at Bhuj. Village Dhiri of Taluka: Bhuj was within the area under the control of the appellant – accused. At village Dhiri, one Shri Juvansinh Jadeja had agricultural lands and he had an electric connection in the said lands. Said Shri Juvansinh Jadeja was paying the electricity consumption bills from time to time. Uncle of Shri Juvansinh Jadeja – Lakhubha Mokaji Jadeja was also residing at village Dhiri and at the relevant time, he was serving as helper in the GEB.

The case of the complainant is that in the year 1984, for the month of April – May, the land of Juvansinh Jadeja was non-used (not cultivated) and therefore, there was no consumption of electricity and therefore, no consumption was recorded in the meter. Despite that, a bill of a huge amount was issued. The complainant – Lakhubha Mokaji Jadeja (uncle of Juvansinh Jadeja) made necessary formalities in the office of Electricity Department for reduction of the bill. An application was given in that regard. While that application was in process, bill for the period June – July, 1984 was also received and it was also of a huge amount. Hence, the complainant – Lakhubha Mokaji Jadeja met the concerned employee of GEB. At that time, on 06.08.1984, the accused – appellant asked for an amount other then the legal remuneration for reducing the amount of the bill, by cancelling the bill. The appellant – accused made necessary changes in the bill and reduced the amount. The complainant went to the office to pay the amount of the reduced bill on 07.08.1984 and at that time, after paying the amount of the

reduced bill, he made payment to the accused, which the accused accepted which led to the present proceedings against him.

3. After the incident, the Investigating Officer – Police Inspector Shri Sharma recorded the statements of concerned employees from the same office. He also recorded statements of the Panchas. He registered an offence and send a copy of the complaint to the Court. After completing the investigation, necessary sanction was obtained from the departmental authority of the accused.

4. Charges framed against the accused are at Exh.10, wherein the aforesaid facts are narrated and after narration of the facts, it is stated that, 'thus, you have committed an offence under Section 161 of the Indian Penal Code within the jurisdiction of the Court.' It is also stated in the charge that, 'the accused has misused his position as a public servant by accepting an amount of Rs.300/- and therefore, appellant has committed offence under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947.' Clause (d) of Sub-section (1) of Section 5 of the Act reads as under:

> “if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage;”

5. The accused having denied the offence, his statement was recorded at Exh.11. The prosecution examined following 5 witnesses:

1. PW1 – Lakhubha Jadeja at Exh.14 (complainant).
2. PW2 – Prabhuji Kanji Gohil at Exh.16 (Panch).
3. PW3 – Pruthvisinh Chatursinh Jadeja at Exh.19 (serving as Deputy Engineer at the relevant time in Rural Sub-division of GEB at Bhuj).
4. PW4 – Jeram Devji Gajra at Exh.26 (serving as Junior Clerk at the relevant time in Rural Sub-division of GEB at Bhuj).
5. PW5 – Hakemchand Dharamdas Sharma at Exh.27 (serving as Police Inspector in Anti-corruption Department at Bhuj at the relevant time).

After the evidence was recorded, to enable the accused to explain the evidence led against him, his additional statement was recorded. The accused denied to have accepted the muddamal amount on the day of the incident from the complainant.

6. The learned Special Judge was pleased to frame the issues and discussed the evidence in detail.

7. The facts which emerge from the depositions of the witnesses examined by the prosecution against the accused are that, 'the complainant, who was serving as part-time – helper in GEB, at village Dhiri, was looking after the lands of Juvansinh Hamirji Jadeja situated at village Dhiri as the owner was residing at village Naliya; that there was a meter on the lands, but as the lands had become

infertile (salted), irrigation was not possible and therefore, the meter was remaining closed; that when the electricity bill was received, an application was given to Deputy Engineer Shri P.C.Jadeja, who had assured him that the bill will be cancelled, but after the application was filed for the bill of April – May, 1984, second bill for June – July, 1984 was received which was for am amount exceeding Rs.1,200/-; that for this bill, he had gone to the office of GEB on the day prior to the day of the incident and had seen Deputy Engineer Shri Jadeja. At that time, he was told that, he shall see the accused Shri Jethibhai in this regard. The complainant had then met the accused and the accused had told the complainant that, 'some amount will be required to be given to 'saheb', to which, the complainant agreed to pay on the next day. The complainant then went to the office of the Anti-corruption Department on 07.08.1984 and filed complaint with Police Inspector Shri H.D.Sharma (the complaint is produced at Exh.28). Police Inspector Shri Sharma, after recording the complaint, called Prabhuji Kanji Gohil and Ghanshyam Shivji Parmar as Panchas. Necessary formalities were completed at the office of the Anti-corruption Department; the complainant produced currency notes of Rs.300/- for being used in trap. Panchas and the complainants were read over the complaint. The muddamal currency notes were applied anthracene powder and thereafter, the same were given to the complainant, after noting down their numbers in a Panchnama. Necessary instructions were given to the complainant and the Panchas and thereafter, they all went to the

place of incident from the office of the Anti-corruption Department in a Jeep. The complainant and Panch No.1, i.e. Prabhuji Kanji Gohil went ahead and Panch No.2 and other police personnel followed them. The complainant, as per the instructions of the accused, first paid the bill amount, obtained a receipt and thereafter, met the accused. At that time, muddamal currency notes of Rs.300/- were given to the accused which were kept by the accused in his pocket. At that time, Panch No.1 was present, who then gave a signal as decided. On that signal, the officers of the Anti-corruption Department reached the place of offence.

8. Deputy Engineer, Shri Jadeja, who was serving in the aforesaid Rural Sub-division office of GEB at Bhuj, after discharging his duties at control room, came to the office and the accused came to his chamber, following him, officers of Anti-corruption Department also entered the chamber of the Deputy Engineer and after following necessary formalities, the muddamal currency notes were got out of the pocket of the accused in presence of the Deputy Engineer. On currency notes being produced, Police Inspector, Shri Sharma drew necessary Panchnama and took possession of the muddamal currency notes. As the muddamal currency notes were kept in pocket, in so doing, anthracene powder applied to the currency notes, had affected other articles kept in the said pocket. Those articles were also seized as muddamal. The said articles included one bill, one ruled paper, lottery tickets of Maharashtra State, etc. The shirt of the accused was also affected by anthracene powder

and that was also seized by the police.

In the chamber of Deputy Engineer, in light of ultra violet lamp, hands of different persons were examined and some of muddamal articles were also examined. Anthracene powder was found present on the hands of the complainant and the accused. Besides the currency notes of Rs.300/-, other articles like bill, lottery ticket and blank paper were also seized. Numbers of the muddamal currency notes were tallied with the numbers recorded in the Panchnama and they having been found to be tallying, Panch No.1 (Prabhuji Kanji Gohil) was asked to pickup the muddamal currency notes presented by the accused for other procedure and on examining the currency notes and the hands of Panch No.1, anthracene powder was found present in light of ultra violet lamp.

9. The case of the accused in his statement is of part acceptance and part denial. Some of the aspects of the case are admitted by the accused while the others are denied, viz. the complainant residing at village Dhiri and doing agricultural work in the lands of Juvansinh Jadeja, the accused has shown his ignorance about the same, whereas the fact that the complainant was serving as a helper in GEB and at the time of trial, he is not in service, is admitted by the accused – appellant. The admissions made by the accused are, he has admitted the bill of Juvansinh Jadeja for the month of April – May, 1984 of Rs.741-91 ps. (Exh.15), bill for the month of June – July of Rs.1,206-19 ps. (Exh.21), an application was

given for cancelling the bill of April – May to the Deputy Engineer, Shri P.C.Jadeja. The accused has also stated that the said application had come to him, but then he has denied of having any knowledge about the complainant having met Deputy Engineer, Shri Jadeja second time after receipt of bill for the month of June – July, 1984 and having represented the matter. The accused has denied of having demanded an amount of Rs.300/- for being paid to, 'saheb'.

The case of the prosecution is that the bill for June – July was for amount of Rs.1,200/-; that the said bill was corrected and that correction was made by the accused. The accused has admitted this fact that, the bill was of Rs.1,206-17 ps. and that amount was cancelled and it was made of Rs.424-77 ps. The accused – appellant has admitted that this correction was made by him of his own and it bears a short signature of the accused.

The accused – appellant has denied that, 'he had asked the complainant to see him after making the payment of the bill and that after the bill was paid, the complainant paid a sum of Rs.300/-.' The accused has also denied that, 'he kept that amount (Rs.300/-) in his pocket.'

According to the deposition of the complainant – Lakhubha, after having taken the amount, the accused told him that he is going to pay that amount to the Deputy Engineer Shri Jadeja. The accused has denied this aspect. However, the accused has admitted the fact

that the officers of Anti-corruption Department reached and Police Inspector Shri Sharma introduced himself. The accused has denied that he had taken out Rs.300/- from his pocket. He has also denied that the hands of different officers of Anti-corruption Department were examined in light of ultra violet lamp. He has denied that presence of anthracene powder was noticed on the hands of the complainant and the accused.

10. Learned advocate for the appellant (the heirs of the original appellant as he has expired during the pendency of the Appeal) vehemently submitted that the accused is not guilty of the offence with which he is charged. The learned advocate for the appellant vehemently submitted that the appellant is falsely implicated in this offence and that the same can be visualized from the contradictions in the evidence of the witnesses. The learned advocate for the appellant read the depositions of all the witnesses, starting with the deposition of the Panch – Prabhuji Kanji Gohil.

Prabhuji Kanji Gohil is examined as PW2. His deposition is at Exh.16. The learned advocate for the appellant submitted that this Panch has narrated the facts in his chief examination which are supporting the case of the prosecution, but in his cross-examination, he has supported the case of the defence. He submitted that this particular aspect can be noticed from a note which is at the end of the cross-examination of the said witness. The note is to the effect that, “learned Public Prosecutor, Shri Dholakiya requests that as it is

already 2.40 PM, he wants to consider as to whether the said witness should be declared hostile or not, the matter be adjourned after recess.”

The matter was kept after recess and after recess, there was no re-examination.

The deposition was read over to the witness and he stated the same to be true. There is an endorsement to that effect by the learned Special Judge, Bhuj – Kutch.

The learned advocate for the appellant placing reliance on paragraph No.7) of the deposition of the said witness submitted that the Panchnama was drawn at the office of the Anti-corruption Department and even the statement was also recorded at the office of the Anti-corruption Department and thereafter, the witness/Panch was allowed to go. He submitted that if that is so, no reliance can be placed on the evidence of this witness.

The submission of the learned advocate for the appellant cannot be accepted for the simple reason that this paragraph No.7 cannot be read in isolation. This paragraph only says that, after what is narrated in paragraph Nos.1 to 6, the Panch along with other police personnel of Anti-corruption Department went to the office of the Anti-corruption Department, there statement and Panchnama was drawn and they were allowed to go. It does not say that what is stated in paragraph Nos.1 to 6 is not correct. In paragraph No.6, this witness has categorically stated that, 'hands of all of us were

examined in light of the ultra violet lamp, but no significant marks were noticed, whereas on the hands of the complainant – Jethibhai significant mark (shining) was noticed. Thereafter, other office procedure was made and we were taken to another room where Panchnama was made.'

It is categorically stated that, 'at the time of Panchnama, Sharma saheb, I, second Panch and staff members of Anti-corruption Department were present, whatever had happened, was recorded in the Panchnama and in the Panchnama I and the second Panch had signed. I am shown Panchnama bearing mark 13/2 in that, at the end, I have signed and the same is produced at Exh.17.'

11. Similarly, it is stated in paragraph No.8 of the cross-examination that, 'before we reached (Anti-corruption Department Office), the complaint was already written. The same was read over and our signatures were taken below the complaint.' It is thereafter stated that, 'the Panchnama was duly written and our signatures were taken, is not correct.' It is also specifically stated in the cross-examination that, 'Panchnama was prepared in our presence, we had signed that Panchnama and the same was written by asking the questions to us. The first part of the Panchnama was prepared in the office of the Anti-corruption Department by Shri Sharma saheb, the same was read and then our signatures were obtained.

12. The learned advocate for the appellants invited attention to paragraph No.11 of Exh.16 (cross-examination of the Panch). It is

stated in paragraph No.11 that, 'yesterday evening, I was called at the office of the Anti-corruption Department. I was explained the Panchnama and my written statement.' But then what follows is important. It is stated that, 'it is not true that copy of the Panchnama and my statement was given to me.' The Panch further states that, 'he was told that we are the Government employees and we should not be hostile and we must depose according to the statement and Panchnama.' Again what follows is important. The witness has categorically denied that, 'we were threatened by saying that if the deposition will not be as per the Panchnama and the written statement, legal proceedings will be taken against us.' It is also stated that, 'it is not true that yesterday night at 10.00 PM Mankadbhai had come to call me.'

13. The learned advocate for the appellant wanted this Court to discard the evidence of this Panch witness in view of the fact that in paragraph No.1, in cross-examination, the Panch has stated that, 'the complainant had told Jethibhai that I have some work with Mr.Jadeja therefore, Jethibhai asked the complainant as to what work he has, to which the complainant replied by saying that I want to see Mr.Jadeja as I have to pay him. Jethibhai had not demanded amount from the complainant. The complainant had gone after giving the amount to Jethibhai.'

The deponent has then stated that, 'he does not remember at this stage as to whether the complainant by his own hand kept the

amount in the pocket of Jethibhai.' Next he has stated that, 'it is true that Jethibhai had thrown the amount on the floor in the room, taking out the money kept in his pocket by the complainant.

The learned Special Judge, by threadbare analysis, has considered explained the deposition of this witness along with entire evidence and has recorded cogent reasons for not accepting the submissions of the defence that the evidence of this witness is not required to be accepted.

The learned Special Judge has, for the reasons set out in the judgment and order, come to the conclusion that the say of the defence that the amount was forcibly placed in the pocket of the accused and the accused had thrown that amount on the floor of the office, cannot be believed as the events which have taken place, rule out this possibility. The defence of the accused is that the amount was kept in his pocket by the complainant against his desire and that he had thrown that amount on the floor of the office. The learned Special Judge has considered this aspect, viz. there is a considerable time lag between the acceptance of the amount by the accused and of Panch accompanying the complainant going to the back portion of the office from where he gave signal to the members of the raiding party after which they reached to the spot. The learned Special Judge has considered that except the bare word of the accused that the complainant forcibly kept the amount in the pocket of the accused and the accused threw away that amount on the floor, no other evidence, viz. any complaint being filed in this

regard, any other staff member being examined in this regard, is a significant factor which rules out this possibility and it renders this defence of the accused without any substance for the reason that his own Deputy Engineer, Panchas, and Police Inspector of Anti-corruption Department cannot be said to have any grudge against the accused so as to falsely implicate him in such a serious offence which is to result in deprivation of the appellant (accused) of the benefits of his entire service.

14. If the evidence lead by the prosecution is examined, it establishes the entire incident without there being any flaw. It is on record that there is land of one Shri Juvansinh Jadeja at village Dhiri, the same is looked after by the complainant Shri Lakhubha Mokaji Jadeja. A bill is received for April – May, which is excessive. An application is filed complaining about the said excess bill. In the meantime, another bill for the month of June – July is received, for which once again the complainant approaches the Deputy Engineer, Shri Jadeja. Deputy Engineer, Shri Jadeja directs the complainant to approach the accused – appellant, Shri Jethibhai, who is a Senior Assistant in the department and who is suppose to look into the matter. The accused demands illegal gratification for doing the favour of reducing that excessive bill of Rs.1,206-17 ps. Date is fixed for the same. The favour is done. The bill amount is reduced to Rs.424.77 ps., that amount is paid by the complainant and after the work is over, he comes to the accused and pays him the amount demanded. Accused telling the complainant that he is to pay this

amount to Deputy Engineer, Shri Jadeja, goes into the chamber of Shri Jadeja, there he is followed by the Police Inspector of Anti-corruption Department, he makes the accused to take out that money, which is already treated with anthracene powder, the same is examined in light of ultra violet lamp. The pocket of the bushirt of the accused and other papers kept in the said pocket are found to have anthracene powder and the accused is found guilty of the offence he is charged with and then he is punished for the same.

15. As against this, the case of the defence is that the accused did not demand the amount from the complainant. Stray sentences are picked up from the evidence of the Panch witness, story is sought to be created that it was the complainant who forcibly kept that amount in the pocket of the accused. For that, no earthly reason is coming on record except a remote suggestion to the effect that the father of the complainant was serving in police department and Police Inspector, Shri Sharma was subordinate to him therefore, to oblige the complainant in his complaint, he – Police Inspector Sharma cooperated with the complainant.

The suggestion is too remote to be believed, more so that the consequences of implicating a person in such a serious charge. The story of the defence then proceeds saying that the amount is forcibly kept in the pocket of the accused was thrown by the accused which the Police Inspector, Shri Sharma made the accused to pickup from the floor and keep in his own pocket. That amount was then got taken out by the accused in the chamber of Deputy

Engineer, Shri Jadeja and therefore, the accused is not guilty.

16. Taking into consideration the evidence on record, the depositions of all 5 witnesses were read by the learned advocate for the appellant, this Court finds that the case of the prosecution is established beyond all reasonable doubts. The defence put forward by the accused has no substance and therefore, the appeal fails. Accordingly, the appeal is dismissed. The judgment and order of the learned Special Judge in Special Case No.7 of 1985 dated 27.11.1987 is confirmed.

(RAVI R.TRIPATHI, J.)

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